

Resolution No. 15-960
Introduced: April 12, 2005
Adopted: April 12, 2005

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
IN MONTGOMERY COUNTY

By: County Council

Subject: APPLICATION NO. G-819 FOR AMENDMENT TO THE ZONING ORDINANCE MAP,
Timothy Dugan, Esquire, Attorney for Applicant Hampden Lane, LLC, OPINION AND
RESOLUTION ON APPLICATION

Tax Account Nos. 07-00490078, 07-00489822, 07-00486726 and 07-00486726

OPINION

Local Map Amendment Application No. G-819, filed on February 3, 2004 by Applicant Hampden Lane, LLC, requests reclassification from the R-10 (Residential, multi-family) and R-60 (Residential, single-family) Zones to the TS-R Zone (Transit Station-Residential) of 30,891 square feet of land in the Edgemoor subdivision (7th Election District) comprised of part of Lots 5 and 6, Block 24B; part of Lots 8 and 9, Block 24D; 313 square feet of right-of-way owned by Montgomery County that was formerly part of Lot 6, Block 24B; and 815 square feet of right-of-way owned by Montgomery County that was formerly part of Lots 8 and 9, Block 24D.¹ The site is located at 4802 and 4804 Montgomery Lane and 4901 and 4905 Hampden Lane, Bethesda.

¹ The Applicant owns approximately 29,763 square feet of the area proposed for rezoning. This includes 7,217 square feet of land that is already dedicated for roadway use. Based on past practice, the Planning Board can be expected to include the past dedication in the tract area used to calculate permitted density. As noted in the text above, the area proposed for rezoning also includes 1,128 square feet of land that is owned by Montgomery County, having been acquired by eminent domain in the past. This property was previously part of the lots and blocks at issue here. The Applicant hopes to buy this property back from the County, then immediately re-dedicate it for public use in connection with its development of the site. The Applicant and Montgomery County entered into a Memorandum of Understanding Agency Authorization (Exhibit 26(a)) on April 6, 2004, which authorizes the Applicant to seek rezoning for the County-owned land included in this application, and at least impliedly authorizes the Applicant to seek rezoning for the dedication parcels, to the extent such authorization may be necessary. The Memorandum of Understanding states explicitly that it "shall not affect, in any manner whatsoever, any public action, review or approval process involving the County. . . ." Ex. 26(a) at 3.

Montgomery Lane in the R-60 Zone, which are used for offices; a three-story multi-family building facing Hampden Lane in the R-10 Zone, which contains apartments, an upholsterer and offices; and a gravel parking area filling the middle portion of the site.

The subject property has street frontage on three sides. To the east it fronts on Woodmont Avenue, an arterial road with four to five lanes providing access for north-south traffic in the CBD. Sections of Woodmont Avenue operate in a one-way direction southbound adjacent to the subject property. To the south, the subject property fronts on Hampden Lane, a business district street with two travel lanes providing for east-west travel between Arlington Road and Woodmont Avenue. The right-of-way on Hampden Lane varies, but is recommended in the Sector Plan to be 60 feet. To the north, the subject property fronts on Montgomery Lane, a narrow business district street that is recommended in the Sector Plan for a 52-foot right-of-way. Travel on Montgomery Lane is primarily two-way east-west, except for a stretch between Woodmont Avenue and a small side street called West Lane, where travel is permitted only in a westbound direction.

B. Surrounding Area and Zoning History

The surrounding area for this application consists of the area bounded roughly by East Lane on the east, Moorland Lane on the north, Elm Street on the south and properties fronting on Arlington Road on the west. This area includes the Transit Station Residential District ("TS-R District") defined in the *Bethesda CBD Sector Plan, Approved and Adopted July 1994* (the "Sector Plan") and a portion of the Metro Core District defined in the Sector Plan.

The surrounding area contains a wide mix of uses and zones, as described in detail on pages 6 through 12 of the Hearing Examiner's Report and Recommendation dated January 7, 2005. Confronting to the east is a high-rise building with a 143-foot-tall office component and a 100-foot-tall residential component. Confronting to the south is a two-story commercial building. Abutting to the west is a luxury townhouse development with five rows of four-story townhouses reaching 55 to 60 feet in height. Confronting directly to the north is a small open area. Adjacent to that open area, partially confronting the subject property, is the 100-foot-high Edgemoor Condominiums building. Other uses in

The development plan shows additional elements that are binding only if the building is approved for a height of 100 feet. These are considered illustrative for zoning purposes.

The area proposed for rezoning in this case (which is the tract area the Applicant proposes to use to calculate permitted density) is 30,891 square feet, or .71 acres. With this acreage, a 40-unit building would represent about 56 dwelling units per acre, and 65 units would be about 91 units per acre. The project would include at least the minimum number of moderately priced dwelling units ("MPDUs") required under county law (12.7 percent), and is expected to include up to 15 percent MPDUs. The Applicant has committed, by binding element, to put all MPDUs on site.

The proposed development would satisfy the zoning ordinance requirements to designate 10 percent of the site to public use space and 20 percent to active and passive recreation space. The latter would likely be provided in part on the ground outside the building, and in part on the rooftop and in interior spaces including a fitness center and a lobby/community room.

Under the current conceptual plan, residents would access the building by car from Montgomery Lane and descend into an underground parking garage. The development would be required to satisfy the parking standards for multi-family uses set forth in the Zoning Ordinance.

The Development Plan in the present case includes each of the elements required under Code § 59-D-1.3, including a land use plan showing site access, proposed buildings and structures, a preliminary classification of dwelling units by type and number of bedrooms, parking areas, land to be dedicated to public use, and land intended for common or quasi-public use but not intended to be in public ownership. The principal component of the development plan in this case is a document entitled "Development Plan," Exhibit 101(a), which contains a conceptual site plan drawing, as well as notes and written binding elements. Additional items required for a development plan have been submitted in the form of vicinity maps (e.g. Exs. 5 and 45(i)) and a conceptual parking layout (Ex. 41(c)).

D. Master Plan

Pages 21 through 37 of the Hearing Examiner's Report and Recommendation contain a detailed discussion of the Sector Plan.

range recommended in the Sector Plan – 45 to 100 d.u./acre – should be considered to substantially comply with the Master Plan. Moreover, the present proposal would provide for the maximum floor area ratio ("FAR") recommended in the Sector Plan, which is another measure of density. For all of these reasons, the District Council finds that the proposed rezoning substantially complies with the density recommended in the Sector Plan.

Substantial compliance with the Sector Plan's use and density recommendations is necessary to support the first finding specified under Section 59-D-1.61 of the Zoning Ordinance. However, the District Council's responsibility to safeguard the public interest in zoning matters requires us to also consider compliance with the Sector Plan as a whole. The Sector Plan's extensive recommendations and guidelines for the TS-R District clearly establish a vision for the TS-R District centered on a low-rise, high-density urban village, with buildings set close to one another and to the streets, using closed block configurations with mostly interior and rooftop open spaces, and a maximum height of 65 feet. The proposed 100-foot high-rise, with its 60 percent cap on building coverage and emphasis on exterior, ground level open space, would not contribute to the achievement of this vision.

The evidence in this case indicates that several developments have been approved in the TS-R District since the adoption of the Sector Plan that involved departures from the Sector Plan's height guidelines. The Applicant argues that because of this history, the departure from the Sector Plan proposed here should also be approved. The District Council notes, however, that several of the past departures from the Sector Plan's height guidelines were very minor. Moreover, those that involved more significant departures from the Sector Plan provided countervailing public policy benefits that justified such departures, such as providing increased density. In the case at hand, the Applicant offers no public policy benefit to balance the requested departure from the Sector Plan. The District Council is persuaded that the vision for the TS-R District proposed in the Sector Plan can be accomplished and should be adhered to.

counts at three intersections along Woodmont Avenue in the vicinity of the subject property are well below the applicable congestion standard of 1,800 CLV.

No evidence was presented to suggest that there is significant congestion in the area of the subject property or the Bethesda CBD in general, or that the proposed development would have adverse impacts on traffic. The District Council agrees with the Hearing Examiner that efforts by opposition parties to discredit the Stage II Memo and the ADAC Report were unavailing. Both the Stage II Memo and the ADAC Report support the Applicant's contention that the Bethesda CBD has adequate road capacity to permit additional residential development. Based on the preponderance of the evidence, the District Council finds the Applicant has adequately demonstrated that the proposed development would not have adverse impacts on traffic.

The proposed development is expected to generate approximately five elementary school students, two middle school students and one high school student. According to school capacity calculations prepared by Montgomery County Public Schools, enrollment is expected to exceed capacity for the entire six-year forecast period in the relevant elementary school. Excess enrollment projected in the applicable middle and high schools is expected to be resolved by expansions identified in the FY 2005-2010 Capital Improvements Program. Based on the school capacity methodology adopted under the county's Annual Growth Policy, capacity has been found to be adequate to support additional development throughout the relevant school cluster, the Bethesda-Chevy Chase cluster. Under these circumstances, and particularly in light of the very small number of potential students involved, the District Council concludes that the possible impact on the public schools would not, in and of itself, be sufficient to justify denial of the present application.

F. Development Plan Findings

Before approving a development plan, the District Council must make five specific findings set forth in Code § 59-D-1.61. These findings relate to consistency with the master plan and the requirements of the zone, compatibility with surrounding development, circulation and access, preservation of natural features, and perpetual maintenance of common areas. The required findings

- (d) To provide the maximum amount of freedom possible in the design of buildings and their grouping and layout within the areas classified in this zone; to stimulate the coordinated, harmonious and systematic development of the area within the zone, the area surrounding the zone and the regional district as a whole; to prevent detrimental effects to the use or development of adjacent properties or the surrounding neighborhood; to provide housing for persons of all economic levels; and to promote the health, safety, morals and welfare of the present and future inhabitants of the regional district and the county as a whole.

The District Council finds that the proposed rezoning would be consistent with some of the stated purposes, but not all. It would satisfy elements (a) and (b) of the purpose clause because the site is located within walking distance of the Bethesda Metro Station and the improved sidewalks and streetscape would enhance pedestrian connections to the Metro.

The District Council finds it difficult to assess the consistency of paragraph (c) of the purpose clause because of the wide range of densities proposed. The Applicant proposes to build between 40 and 65 dwelling units, which translates into densities ranging from about 56 dwelling units per acre to about 91 units per acre. The low end of this range is within the range suggested in the Master Plan for the TS-R District as a whole, but it is a fairly low density level for the subject location, and particularly for such a large building. The upper end of this range approaches the maximum density recommended in the Master Plan for locations like this, on Woodmont Avenue, and would be entirely appropriate. However, there is no guarantee that if the zoning were approved, the Applicant would build the greater number of units rather than the smaller.

Paragraph (d) of the purpose clause is multi-faceted. The proposed development would provide housing for persons of at least two economic levels, those occupying the market-rate units and those in the MPDUs. The District Council finds, however, that permitting a building at this location that departs significantly from the Sector Plan's height recommendation and basic vision for the TS-R District would not stimulate the coordinated, harmonious and systematic development of the area, and would have detrimental effects on the development of the surrounding neighborhood. As discussed in Part D above, the Sector Plan's vision for the TS-R District can still be carried out, despite some developments that do not fully support that vision, and the District Council is persuaded that substantial

**Development Standards and Special Requirements for TS-R Zone
Code §§ 59-C-8.4 and 8.5**

Development Standards	Permitted/ Required	Proposed
Minimum tract area (area to be rezoned)	20,000 sq. ft.	30,891 square feet
Maximum density of dwelling units per acre		
a. Floor area ratio	2.5	Not to exceed 2.5*
b. FAR with bonus for MPDUs	3.05	Not to exceed 3.05*
b. Dwelling units per acre	150 units/acre	56 – 91 units/acre*
c. Gross floor area	94,218 sq. ft.	Not to exceed 94,218 sq. ft.*
Open space		
a. Minimum percentage of net area devoted to public use space	10%	Not less than 10%
b. Minimum percentage of net lot area devoted to active and passive recreation space.	20%	Not less than 20%. Area to be provided on the ground to be determined by Planning Board.
c. Total minimum open space	30%	Not less than 30%
d. Maximum building coverage	None	No more than 60%
Special Requirements ²		
a. Maximum building height	None	100 feet
b. Parking to be located so as to have minimal impact on adjoining residential properties		All parking to be underground except for small pick-up/drop-off area/visitor parking.
Minimum parking (per § 59-E-3.7)	75 spaces	No binding element

* Denotes binding elements.

4. Compatibility

The District Council's finding of compatibility rests on a number of factors. Preliminarily, the District Council rejects the notion put forth by opposition parties that the conceptual nature of the proposed development makes it impossible to assess compatibility with the surrounding area. On the contrary, the District Council finds that the binding elements specified on the Development Plan provide adequate parameters to permit a full and appropriate evaluation of compatibility.

The use proposed here – multi-family residential – is clearly compatible with the residential uses in adjoining buildings. The use is also compatible with non-residential uses, which

² Additional special requirements in Section 59-C-8.5 address interior streets, which are not proposed for this small site, and ancillary commercial uses, which also are not proposed.

themselves, creating the potential for a dramatic impact on air, light and visual appeal. The City Homes residents who supported this application made much of the 18-foot setback from the property line, but the District Council is not persuaded that the additional 18 feet of space would be enough to create a compatible relationship.

In sum, the District Council concludes that a building with the parameters presented here would not fit compatibly into its surroundings.

(c) That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.

This application provides only an illustrative example of the type of internal vehicular and pedestrian circulation system and points of external access that are anticipated for this project. If the driveways were to be located as shown on the conceptual site plan, the evidence demonstrates that sight distances would comply with County standards. The evidence suggests that the configuration of the garage entrance and the drop-off/visitor parking area would require careful attention to avoid potential traffic safety problems such as drivers executing multiple turning movements in front of a busy garage entrance, or backing out into traffic. This would undoubtedly be the subject of detailed discussion during the site plan review process.

The Opposition's concerns are based partly on an expectation that the amount of parking required by the Zoning Ordinance would not be enough, leading to chronic parking shortages. Anecdotal evidence suggests that the Zoning Ordinance requirements may not be adequate, but those are the standards currently applied, and the record does not suggest any justification to impose a higher parking standard – at least not at the zoning stage. Moreover, keeping parking availability tight is one of the strategies described in the Stage II Memo as a means of persuading people to use public transit.

Based on the preponderance of the evidence, the District Council concludes that the proposed internal vehicular and pedestrian circulation systems and points of external access would be safe, adequate, and efficient.

but is not consistent with the Sector Plan's overall vision for the TS-R District or with its specific height recommendation for the subject property. The District Council is persuaded that the Sector Plan's basic vision can still be implemented successfully, and that the present proposal offers no countervailing public benefit that would justify the departure from the Sector Plan that is requested.

The evidence demonstrates that the proposed development would not have any adverse impact on existing roadways in the area. The evidence also suggests that the proposed development is expected to add five students to an elementary school that has adequate capacity under the AGP, but is considered over capacity by Montgomery County Public Schools. The relevant middle and high schools are expected to have adequate capacity by the time the building proposed here is built. The District Council finds that under these circumstances, the minor potential impact on public schools would not be sufficient, in and of itself, to justify denial of the application.

Having carefully weighed the totality of the evidence, the District Council concludes that because of the failure to substantially conform to the Sector Plan, approval of the requested zoning reclassification is not in the public interest.

Because the present application conflicts with the applicable Sector Plan, does not satisfy all elements of the purpose clause for the zone requested, and proposes a form of development that would not be compatible with the surrounding neighborhood, the application will be denied in the manner set forth below.

ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-819, requesting reclassification from the R-10 and R-60 Zones to the TS-R Zone of 22,546 square feet of land located at 4802 Montgomery Lane, 4804 Montgomery Lane, 4905 Hampden Lane and 4901 Hampden Lane, Bethesda, all in the 7th Election District, be denied.